Court No.2.

Civil Misc. Writ Petition No. 12708 of 1996
(New No. 272 (M/S) of 2001).

Govind Ballabh & two others …… Petitioners.

Versus

The Board of Revenue & 37 Others. ……. Respondents.

Hon. P.C. Verma, J.

Two suits under Section 209 of Uttar Pradesh Zamindari Abolition & Land Reforms Act were filed for eviction of the petitioners from 5 Nali land of Khata No.25 and 5 Nali land of Khata No.57. The land in dispute was purchased by the respondent No.4 from one Goverdhan Pathak in the year 1980 by sale deed dated 17.1.1980. The basis of these suits were that the petitioners entered into forcible possession over the land in dispute in the year 1981. Therefore, he claimed relief for eviction and further relief for damages. The petitioners contested the suit on the ground that they were in possession over the land in dispute from the year 1965, therefore, they were not trespassers and they are in possession over the land under their own right and title. The suits were dismissed against which two appeals were filed. The appeals were allowed and the appellate court recorded a finding that the petitioners were trespassers and, therefore, passed a decree for eviction against the petitioners. Feeling aggrieved by the appellate order, the petitioners preferred a second appeal before the Board of Revenue.

The Board of Revenue has categorically recorded a finding based on evidence that the respondent No.4 was in possession over the land in dispute immediately sale deed was executed and transfer was effected. The Board of Revenue has further found that there was no document on record to prove the possession of the petitioners from the year 1965. Entries in Khasra and Khatauni did not show the name of the

petitioners, in view of the finding of fact recorded by the appellate court as well as second appellate court that the petitioners could not prove their possession over the land in dispute from 1965, suit for eviction of petitioner was decreed.

Learned counsel for the petitioners could not point out any perversity in the judgment passed by learned lower revenue courts. Otherwise also, he could not convince this Court as to how the petitioners have perfected their title over the land in dispute. Therefore, in my opinion, the appellate court has rightly treated the petitioners trespassers and passed decree of eviction.

Learned counsel for the petitioners submitted that the suit was barred by time and appellate and revisional court did not advert to on this issue. Since the suit was filed on the basis of cause of action accrued to the plaintiff in the month of May 1981, when the petitioners took the forcible possession of the land, a limitation has to be counted from the date of accrual of cause of action not from the date of sale deed in a suit under Sec.209 of U.P.Z.A. & L.R. Act. Therefore, the argument of the learned counsel for the petitioners is misconceived and is liable to be rejected.

Learned counsel for the petitioners further submitted that no demarcation of the land in dispute was indicated either in the sale deed or in the plaint.

The suit under Sec. 209 of U.P.Z.A. & L.R. Act for eviction of the petitioners was filed to evict them from the land of which the petitioners took forcible possession in the year 1981, which is the basis of the suit. This fact itself indicates and specify the land over which the petitioner-defendant entered into forcible possession on which the respondent No.4 was in possession. Therefore, this argument of the learned counsel for the petitioners is without force. The petitioners have

to vacate the land of which they have taken forcible possession from the respondent No.4.

For the reasons recorded above, the petition fails and is hereby dismissed.

(P.C. Verma, J.)

5.3.2002.
P. Singh